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UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

- - - - -

United States of America,)
)
 Plaintiff,)
)
 vs.)
)
Adenkunle Olufemi Adetiloye,)
)
 Defendant.)
)

FILE NO. 3:08-cr-28

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T R A N S C R I P T

O F

P R O C E E D I N G S

CHANGE OF PLEA - FEBRUARY 9, 2011

Pages 1-33

TAKEN AT: QUENTIN BURDICK UNITED STATES COURTHOUSE
 655 FIRST AVENUE NORTH
 FARGO, NORTH DAKOTA 58102

BEFORE: THE HONORABLE RALPH R. ERICKSON

COURT REPORTER: KELLY A. KROKE

A P P E A R A N C E S**MR. NICHOLAS CHASE****COUNSEL FOR PLAINTIFF;**

Office of US Attorney

655 1st Avenue North, Ste. 250

Fargo, ND 58102

MR. RICHARD HENDERSON**COUNSEL FOR DEFENDANT;**

Attorney at Law

112 Roberts Street, Ste. 200

Fargo, ND 58102

P R O C E E D I N G S

(FEBRUARY 9, 2011: The following proceedings commenced at 10:40 a.m.):

THE COURT: Good morning. We'll go on the record in a case entitled United States of America versus Adenkunle Olufemi Adetiloye. The record should reflect that the defendant appears personally along with his counsel, Mr. Henderson. Mr. Chase appears on behalf of the United States.

The United States has filed with the Court an Information in lieu of the Indictment. In the Information the defendant is charged with one count of mail fraud, in violation of 18, United States Code, Section 1341 and 18, United States Code, Section 2. In addition the Information seeks the forfeiture of any property, real or personal, which constitutes or is derived from proceeds traceable to the offense pursuant to 18, United States Code, Section 981(a)(1)(C), 982(a)(3), and 28, United States Code, Section 2461(c).

This is a Class B felony. It carries a maximum term of imprisonment of 30 years. There is no mandatory minimum jail sentence or prison sentence. The maximum allowable fine is \$1 million, supervised release not to exceed five years. There is a \$100 special assessment which is mandatory and must be collected at

1 the time of sentencing if the defendant pleads guilty or
2 is convicted.

3 Sir, do you understand the nature of the
4 charge being brought against you?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And do you understand the
7 potential penalties that you face?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. You may be seated.
10 You have certain constitutional rights. It's my duty to
11 inform you of those rights. You have the right to
12 remain silent. If you choose to give up your right to
13 remain silent anything that you say could later be used
14 against you.

15 You have the right to be represented by a
16 lawyer at every stage of these proceedings.
17 Mr. Henderson is with you here today. If you need to
18 talk to him at any time you may. If you need to talk to
19 him in private if you let me know we'll make
20 arrangements for that to happen. Under the law of the
21 United States you are presumed to be innocent; that is,
22 you're presumed to be not guilty. This presumption of
23 innocence will stay with you through the whole trial.
24 It may only be overcome in one of two ways. The first
25 is if you freely and voluntarily plead guilty, in which

1 case you will basically incriminate yourself. The
2 second is if after a trial the finder of fact, and that
3 would usually be a jury, finds you guilty beyond a
4 reasonable doubt.

5 Now in order for you to be found guilty
6 beyond a reasonable doubt the finder of fact would have
7 to conclude that the government has established each of
8 the essential elements of the crime charged with proof
9 beyond a reasonable doubt. And if the case is tried to
10 a jury the jury would have to reach this conclusion
11 unanimously before you could be convicted. All jury
12 verdicts in federal court, whether guilty or not guilty,
13 must be unanimous.

14 You have the right to a trial by jury. You
15 could waive your right to a trial by jury and if the
16 government consents and the Court approves the case
17 would then be tried to the judge without a jury. That's
18 called a bench trial. The fact that the case is tried
19 to the bench doesn't change the burden of proof. It's
20 always on the United States government. It's always to
21 proof beyond a reasonable doubt. And they always have
22 to prove each of the essential elements of the crime
23 charged with proof beyond a reasonable doubt.

24 Now if the case is tried to a jury you have
25 the right to participate in the selection of that jury.

1 The way that that would happen is a group of potential
2 jurors would be randomly summoned into court. Once they
3 got here they'd be placed under oath and then a smaller
4 group would be randomly called and placed in the jury
5 box. Once they're in the jury box I'd start asking
6 questions trying to make sure that each of the jurors is
7 legally qualified to hear the case and that they don't
8 harbor any biases or prejudices such that they should
9 not be allowed to sit in this particular case. When I'm
10 done asking my questions your lawyer will get to
11 question the jury. When your lawyer gets done
12 questioning the jury the government's lawyer will
13 question the jury.

14 Now during all this questioning if at any
15 time any party believes that a juror is not qualified
16 they may raise a challenge for cause. The reason they
17 call these for-cause challenges is because whoever
18 raises one must state the reason why they believe that
19 the juror is not qualified. If I agree I will remove
20 the juror. If I disagree I will overrule the challenge
21 and the juror will stay.

22 Eventually then we'll get to the point where
23 everyone's done asking their questions, all the
24 for-cause challenges will have been raised, I will have
25 ruled on all of them, and the only people left sitting

1 in the jury box are people that I think are legally
2 qualified to hear the case.

3 Once that happens each side will be given
4 peremptory challenges. Now a peremptory challenge is a
5 challenge to remove a juror for any reason at all or no
6 reason and you don't ever have to explain. The
7 government will get six peremptory challenges. You will
8 get 10. Once those 16 people are removed from the jury
9 we'll be left with a 12-person jury pool. That panel of
10 jurors will be the jury that decides the case.

11 Now once the jury is selected I will
12 instruct them on some of the law that applies and
13 following that the United States will make an opening
14 statement. After their opening statement your lawyer
15 may make an opening statement or he may decide to
16 reserve the opening statement till later in the trial.
17 After that the government will call witnesses to
18 testify. You have the right to confront and to
19 cross-examine any witness who's called to testify
20 against you. You have the right to object to the
21 evidence being offered against you consistent with the
22 law of evidence as it's applied in our courts. It's my
23 duty as the judge to rule on all objections.

24 At some point the United States will have
25 presented all the evidence that they wish to present and

1 they will inform the Court that they rest. Once the
2 United States has rested their case you have the right
3 to present a defense. Now you're under no legal
4 obligation to present a defense. That's because the
5 presumption of innocence alone is a sufficient reason to
6 find you not guilty if the government's failed to prove
7 the charge beyond a reasonable doubt.

8 But you might choose to present a defense
9 and if you do you have the right to call witnesses to
10 testify on your behalf. You have the right to use the
11 subpoena powers of the United States to force witnesses
12 to attend, to testify and to produce any documents that
13 might be relevant to your defense. You have the right
14 to testify yourself but you also have the right to
15 remain silent and free from self-incrimination. This
16 means you're a witness in this case only if you choose
17 to be a witness. If you choose to be a witness the
18 government will get to cross-examine you. If you choose
19 not to be a witness no one may comment on your failure
20 to testify and no inference of guilt can be drawn from
21 that failure to testify and I will instruct the jury
22 that they can't discuss it in any way in arriving at
23 their verdict.

24 At some point you will have presented all
25 the evidence that you intend to present and the defense

1 will rest. Once the defense has rested the United
2 States will have an opportunity for a rebuttal. This is
3 not a chance to retry the whole case. It is simply an
4 opportunity to respond to the claims raised by the
5 defense in their defense. Usually the rebuttal is quite
6 short but whether it's short or long the same rules
7 apply. If they call a witness you have the right to
8 cross-examine that witness. You have the right to
9 object to the evidence being offered against you and I
10 still have the duty to rule.

11 At some point the government will rereest
12 their case and that will close the evidence. Once all
13 the evidence is in I will further instruct the jury on
14 the law and following that the parties will get to make
15 closing arguments. The government will go first, then
16 the defense, and finally the defense has once again the
17 right of rebuttal. Now you may have noticed they're
18 getting to go first and last at every stage of this
19 trial. It's not because I favor the government. It's
20 because the long tradition in our law is whichever party
21 has the burden of proof they have the right to both open
22 and close the trial and each of its parts.

23 In any event when we're all done with that
24 I'll send the jury out to deliberate. I'll tell them
25 that they must elect a foreperson, that they must

1 discuss the case. They must decide what the facts are.
2 Once they find those facts they will be asked to apply
3 them to the law and in that way they should answer the
4 questions on the verdict form unanimously. If they can
5 reach a unanimous verdict we'll receive it in open
6 court. If they find you not guilty you'll walk out of
7 here a free person. If they find you guilty beyond a
8 reasonable doubt then the case will go on the calendar
9 for a sentencing hearing, which will take place at some
10 later date in all probability.

11 You have the right to a speedy trial. You
12 have the right to a public trial. You have the right to
13 a reasonable delay to prepare your defense. You have
14 the right to be admitted to a reasonable bail subject to
15 the Bail Reform Act and the Constitution of the United
16 States.

17 You should be aware that these -- this is a
18 felony charge. If you plead guilty to it or are
19 convicted of it there are certain collateral
20 disabilities that will attach to you. These are things
21 that happen whether they're part of the sentence or not.
22 For example, under the federal law of the United States
23 no person convicted of a federal felony may ever possess
24 a firearm or ammunition anywhere in the United States at
25 any time and there's no way to have that right restored,

1 at least not presently.

2 Now you should also be aware that the states
3 have laws that apply to previously convicted felons. In
4 some states previously convicted felons can't vote.
5 They can't hold a public office. They can't serve in a
6 position of public trust. They can't serve on a jury.
7 They can't acquire certain types of jobs. They can't
8 hold certain types of professional licenses. They may
9 be required to register. I don't know the law of all 50
10 states. I can tell you this: The burden will be on you
11 to know the law wherever you are and to follow it. And
12 the law changes from state to state so you can't assume
13 because you can do something legally here that you'll be
14 able to do it legally in a different state.

15 Finally, if you're not a citizen of the
16 United States you should be aware that this is a crime
17 that could result in your removal from the country. If
18 you are removed from the country you will not be allowed
19 to reapply for admission for some period of time, and
20 you will not be allowed to return to the country without
21 the written permission of the Secretary of Homeland
22 Security. It may be that the permission of the
23 Secretary of Homeland Security is impossible to get or
24 difficult to get so you should be aware of that. If you
25 are a citizen of the United States you obviously can't

1 be deported and you only should bear in mind that
2 international travel may be much more complicated
3 because most nations' states will not allow you into
4 their country without the written permission of some
5 government official, which could be expensive or time
6 consuming to get if it's possible to get it at all.

7 Sir, do you understand your rights as you've
8 been informed of them?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Do you have any questions about
11 any of them?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: I've been informed that you
14 intend to enter a plea here today.

15 MR. HENDERSON: Your Honor, I think you
16 should advise him of his right to consult with the
17 council of the nation of --

18 THE COURT: I'm sorry. You should be aware
19 that under the law of the United States that if you are
20 not a citizen you have the right to consult with a
21 representative of the government of your citizenship.
22 This right is guaranteed to you by the protocols
23 established at the Vienna Conference which the United
24 States has signed. You should also be aware that if you
25 enter a plea you will waive your right of consultation

1 so if you want to talk to somebody from the government
2 of your citizenship you should tell me that today.

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: All right. Could you please
5 stand and take an oath.

6 THE CLERK: Please raise your right hand.

7 (Oath administered.)

8 THE COURT: Could you state your full name
9 for the record, sir.

10 THE DEFENDANT: Adenkunle Olufemi Adetiloye.

11 THE COURT: And how old are you, sir?

12 THE DEFENDANT: Forty years old.

13 THE COURT: And how far have you gone in
14 school?

15 THE DEFENDANT: Through college.

16 THE COURT: Are you able to read and write
17 in English?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Have you had any difficulty
20 understanding these proceedings?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Have you had any difficulty
23 communicating with your lawyer?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Is English your first language

1 or a second language for you?

2 THE DEFENDANT: Second language.

3 THE COURT: Do you have any problems with
4 the English language?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: Have you ever been diagnosed as
7 a person who is suffering from any sort of a mental
8 illness? And I mean that in its broadest sense so I
9 would consider things like alcoholism, drug addiction,
10 depression, suicide attempts, bipolar syndrome,
11 schizophrenia, panic anxiety disorder,
12 obsessive-compulsive disorder, agoraphobia, basically
13 anything?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: How's your physical health?

16 THE DEFENDANT: Very well.

17 THE COURT: Are you currently taking any
18 medications for any reason?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Have you consumed any alcohol or
21 drugs in the past 48 hours?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Have you had a chance to discuss
24 this case with your lawyer?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Mr. Henderson -- wait a minute,
2 I should start with this. Are you satisfied with the
3 representation that you've received from your lawyer?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Mr. Henderson, have you seen
6 anything that would cause you to question your client's
7 competence?

8 MR. HENDERSON: No, Your Honor.

9 THE COURT: It appears to the Court that the
10 defendant's answers are appropriate, that they are
11 responsive, that he is in a position to assist his
12 counsel in his own defense and that he understands the
13 proceedings against him. He is, therefore, legally
14 competent to proceed.

15 Mr. Henderson, my file reflects that this is
16 an open plea; is that true?

17 MR. HENDERSON: That's correct, Your Honor.

18 THE COURT: All right. Mr. -- is it --

19 MR. HENDERSON: Adetiloye, Your Honor.

20 THE COURT: Adetiloye, I'm sorry.

21 Mr. Adetiloye, basically what I just asked your lawyer
22 was whether or not there is any agreement with the
23 United States and he has told me that you have no
24 agreement with the United States other than the
25 agreement to file the Information in lieu of the

1 Indictment; is that true?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Okay. And the government's
4 performed whatever they've agreed to do in your case by
5 filing the Information; is that true?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: When the original Indictment was
8 handed down, did you have a chance to review it with
9 your lawyer?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Did you discuss all of the
12 charges that were then pending against you?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And did you discuss the possible
15 penalties that you might face if you were convicted or
16 plead guilty to those charges?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And at some point did your
19 lawyer and Mr. Chase on behalf of the United States have
20 some negotiations about trying to reach an agreement on
21 an Information as opposed to that Indictment.

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. And when the
24 Information was -- and you know what an Information is.
25 That's a formal charge brought by the United States

1 attorney rather than a grand jury, okay? Do you
2 understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: When they brought this new
5 charge against you, did you have a chance to review it
6 with Mr. Henderson?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Did you discuss what the meaning
9 of this Information was?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And did you discuss that you had
12 the right to proceed to a jury trial if you wished?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And you had the right to enter a
15 plea if you wished?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And did you discuss with your
18 lawyer the benefits and the risks of both approaches?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Did Mr. Henderson basically go
21 through the Information and answer all of your
22 questions?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And when you were done with
25 those discussions, did you feel like you fully

1 understood what your options were?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And do you understand that the
4 decision that you make in this case is yours? Your
5 lawyer might advise you to do something but in the end
6 you don't have to do what your lawyer's told you. You
7 get to decide for yourself what you want to do with your
8 case. Do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And are you -- at this point
11 have you made a decision as to what you would like to
12 do?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Can you tell me what it is you
15 want to do today?

16 THE DEFENDANT: To plead guilty to the mail
17 fraud.

18 THE COURT: Do you intend as well to admit
19 to the forfeiture provision?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Okay. Do you have any questions
22 at all about these proceedings here today?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: All right. Mr. Adetiloye, you
25 have the right to have the information read to you

1 today. You could waive the formal reading if you wish.
2 It's entirely up to you.

3 THE DEFENDANT: I'll waive it.

4 THE COURT: All right. Are you prepared at
5 this time to enter a plea to the charge?

6 THE DEFENDANT: Yes, Your Honor.

7 MR. CHASE: Your Honor, I apologize for
8 interrupting at this point. I do know that in my
9 opinion the Information reflects, as you correctly
10 stated and the defendant stated, that there was some
11 negotiations that the Information essentially is the
12 charges in the Indictment. Nonetheless I know that the
13 defendant to the extent there is -- to the extent that
14 he has a right to have the information taken to the
15 grand jury, I know that he has waived like the right to
16 have that taken to the grand jury.

17 THE COURT: I think it's a lesser
18 included -- or it is an included offense in the
19 Indictment, right?

20 MR. HENDERSON: The Indictment did include I
21 think three counts of mail fraud.

22 THE COURT: Right. And it seems like the
23 facts are the same as I read them. Is that the truth?

24 MR. CHASE: As far as I'm concerned they
25 are, Your Honor. I just wanted to --

1 THE COURT: You just want me to ask about
2 that? Sorry about talking over him.

3 MR. CHASE: Sorry, Your Honor.

4 THE COURT: Mr. Adetiloye, you have the
5 right to have these charges considered by the grand jury
6 before you move forward. Now the grand jury's already
7 indicted you. What they do is -- well, first of all,
8 it's a group of people not fewer than 15 nor more than
9 23. They review the evidence and they decide whether or
10 not charges should be brought. And in order to do that
11 the question that they're asked is do they find probable
12 cause to believe that a crime has been committed and do
13 they find probable cause that you are the person who
14 committed that offense.

15 In any event you could ask that this matter
16 be re-presented to the grand jury or you could waive
17 further proceedings before the grand jury. You should
18 be aware that if the grand jury reviews the evidence and
19 they decide that there's insufficient evidence to move
20 forward they would return a no true bill, which would
21 have the effect of dismissing the charge against you.
22 If they review the evidence and they find that there is
23 probable cause in all probability the Information -- the
24 Indictment that they return would look similar to the
25 Information. Do you understand what a grand jury is?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you want this case
3 resubmitted to the grand jury or do you wish to move
4 forward today?

5 THE DEFENDANT: I'll go ahead today, Your
6 Honor.

7 THE COURT: All right. Now the Information
8 that's brought by the United States attorney charges you
9 with mail fraud. Essentially it says that you
10 participated in a scheme to defraud financial
11 institutions out of money with knowledge that the scheme
12 was fraudulent. It basically involved assuming
13 identities of unsuspecting persons and using the
14 personal information that you had surreptitiously
15 obtained to receive credit by opening credit card
16 accounts and other bank and credit card accounts, both
17 Visa and others, in their names and that once that
18 happened you submitted charges for various things,
19 including collection of debts and locating delinquent
20 debtors. The information that you obtained then was
21 used to obtain more than one credit card by posing as
22 another person without that person's knowledge. It's
23 alleged that this conduct began in March 2004 and it
24 ended sometime in August of 2007. It is alleged further
25 that this conduct occurred in the District of North

1 Dakota.

2 It is specifically alleged that you,
3 Adenkunle Olufemi Adetiloye, for the purpose of
4 executing and attempting to execute the aforementioned
5 scheme to defraud and to obtain money and other items of
6 value by means of false and fraudulent pretenses,
7 representations and promises, did knowingly cause to be
8 delivered by the United States Postal Service, and other
9 commercial interstate carriers, according to the
10 direction thereon balance transfer checks, bank and
11 credit cards, and other items of value from Fargo, North
12 Dakota and elsewhere to addresses that were directed to
13 be delivered by one or more of the participants in this
14 scheme and which were controlled by one or more of the
15 participants in this scheme. This is a violation of 18,
16 United States Code, Section 1341 and 18, United States
17 Code, Section 2. To that charge how do you plead?
18 Guilty or not guilty?

19 THE DEFENDANT: Guilty, Your Honor.

20 THE COURT: All right. And do you
21 understand -- in addition there's a forfeiture
22 allegation in which the United States seeks the
23 forfeiture pursuant to 18, United States Code, Sections
24 981, 982 and 28, United States Code, Section 2461 all
25 right, title and interest in any property, real or

1 personal, which constitutes or is derived from the
2 proceeds traceable to the violations of 18, United
3 States Code, Section 1341; and, further, that if these
4 assets as a result of any act or omission on the part of
5 the defendant cannot be located upon exercise of due
6 diligence; (b) has been transferred to, sold to, or
7 deposited with a third person; (c) have been moved
8 beyond the jurisdiction of the Court; (d), have been
9 substantially diminished in value; (e) have been
10 commingled with other property that can't be easily or
11 readily subdivided that substitute property may be
12 sought by the United States and forfeited. To this
13 forfeiture allegation do you admit or deny?

14 THE DEFENDANT: Admit.

15 THE COURT: Do you understand that by
16 entering this plea of guilty you're giving up your right
17 to a jury trial?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you understand that you're
20 giving up your right to a trial of any kind?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you understand you're giving
23 up your right to confront and to cross-examine the
24 witnesses that the government might call to testify
25 against you?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you understand you're giving
3 up your right to call witnesses on your own behalf?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you understand that you're
6 giving up your right to be a witness yourself and your
7 right to be free from self-incrimination?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you understand you're giving
10 up your right to have the United States prove beyond a
11 reasonable doubt that you're guilty of this crime?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And do you understand that
14 you're giving up your right to a unanimous jury verdict
15 before you could be convicted?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Has anyone made any threat or
18 promised you anything in order to force you into this
19 plea?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Is this plea a matter of your
22 own free will?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And you understand that by
25 making the forfeiture admission that you're giving up

1 your right to a hearing on whether or not the property
2 should be forfeited?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. The Court finds that
5 the plea and admissions are freely and voluntarily and
6 knowingly made. Is there a factual basis?

7 MR. CHASE: Your Honor, before I go through
8 my factual basis, it's my understanding through talking
9 to Mr. Henderson that the defendant is not likely to
10 agree to everything in my factual basis. I think that
11 based on my conversations with Mr. Henderson the
12 information itself contains a factual basis for this
13 charge and I do not expect the defendant to agree to
14 anything really beyond what is stated in the
15 Information.

16 Nonetheless, Your Honor, to give the Court
17 an explanation of our -- a summary of the evidence that
18 we would expect to show at trial, Your Honor, the state
19 of Delaware Division of Corporations received an
20 application by fax March 24th, 2004 to incorporate
21 Syspac and that act, Your Honor, really was sort of the
22 beginning of the -- of the scheme to defraud in this
23 case.

24 Later on April 19th the -- there was a
25 request for a business license for this corporation of

1 Syspac. The address that was used on the Syspac
2 business license and incorporation application was
3 actually an incorporator in the state of Delaware. The
4 name of the president of Syspac was Donald Douglas, also
5 listed John Moran as the director.

6 This business license was in fact issued on
7 April 26th, 2004. It listed as the nature of its
8 business as a collection agency locating delinquent
9 debtors. The license was renewed. One time it was
10 renewed for a period of three years on June 13th. The
11 fee on this renewal was paid by a Visa credit card in
12 the name of Ervin Hinds and was sent this credit card
13 payment by an IP address assigned to Rogers Cable
14 Provider, an internet service provider in Canada.
15 The -- this business license was then used to apply for
16 access to both Choice Point and Lexus-Nexus Accurate.

17 At some point the investigation in this
18 started. The investigator at the time contacted an
19 investigator in the Department of Revenue in the state
20 of Delaware. They sent a ruse letter to the person
21 purporting to be Donald Douglas stating that they were
22 intending to suspend the license because the name on
23 the -- the person who paid for the license renewal,
24 Ervin Hinds, was not listed as an officer of the company
25 and that the enclosed documents should be returned with

1 this.

2 On July 10th the investigator at the
3 Department of Revenue in Delaware received a return
4 package, Fed Ex package, from somebody purporting to be
5 Donald Douglas. Fed Ex can confirm that it did come
6 from the Toronto, Ontario area. Inside the Fed Ex
7 package was a smaller envelope containing the ruse
8 letter and document to be completed by Donald Douglas.
9 A fingerprint was taken from that ruse envelope, the
10 inner envelope. That fingerprint has matched to the
11 defendant's fingerprints that are in his immigration
12 file and fingerprints that were taken at the time of his
13 arrest. The incorporator in that -- for the -- for
14 the -- for Syspac was Corporations USA. It was told to
15 forward all mail from Corporations -- that Corporations
16 USA received on Syspac's behalf. It was told to forward
17 all mail to an address at 2112 Danforth in Toronto.

18 The following -- what also occurred, Your
19 Honor, is another application -- at some point the --
20 the Lexus-Nexus account was suspended. Fraud was
21 suspected. There was a new application for -- for
22 access in the Lexus-Nexus database under Comet
23 Consultants, a new corporation that was also
24 incorporated in Delaware. This incorporation license
25 was paid with the same Ervin Hinds credit card that was

1 used to renew the Syspac license.

2 The people at Choice Point have established
3 several things. First of all that they did in fact get
4 an application from Donald Douglas containing the Syspac
5 business license. It contained an address for the
6 application of 2802B Philadelphia Pike. That is what I
7 will refer to in this as a CMRA. It's essentially a
8 commercial mailbox. Most people would be familiar with
9 Mailboxes Etc. It is an address that is run by Gat Pac.

10 So that address was used as Syspac's address
11 in their application at Choice Point. The mail that was
12 received that was sent from Choice Point was sent to
13 that Gat Pac address. There were thousands of searches
14 conducted on Choice Point of obtaining Social Security
15 numbers and names and other identifying characteristics.
16 The -- from this it's been determined that 181 financial
17 accounts were opened using the searches from Choice
18 Point during this time period, which would be 179
19 different people. Those people include Michael
20 Krawcysky, Donald Douglas and Ervin Hinds.

21 Documents were obtained from Gat Pac which
22 again was the CMRA used to receive mail from Choice
23 Point addressed to Syspac Financial Services and Donald
24 Douglas. The documents included a document purporting
25 to be an application from Michael Krawcysky. That

1 application had a fingerprint on it that again matched
2 the defendant's. It had a driver's license and
3 corporate ID. Driver's license purported to be Michael
4 Krawcysky. It's been confirmed that that driver's
5 license was counterfeit and also corporate ID from
6 Ebanin Inc. That corporate ID was also confirmed to be
7 counterfeit. The -- and both the driver's license and
8 the ID card also had the defendant's fingerprints on it.

9 Gat Pac said that it did not receive any
10 mail addressed to Krawcysky. It only received mail from
11 Choice Point addressed to Syspac and Donald Douglas.
12 Lexus-Nexus, the evidence from there shows again an
13 original Syspac business license and Donald Douglas. It
14 provided the same numbers as the Choice Points. There
15 were a total of more than 10,000 searches performed,
16 including searches that would be people at work that
17 allows somebody to search a work place and see all of
18 the people who work there. In all it appears that about
19 58 -- I'm sorry, 66 financial accounts were opened from
20 that -- from those searches, 58 of which were also
21 searches done on Syspac's Choice Point.

22 Your Honor, in all the -- I mentioned a
23 little earlier that there was also a later -- a later
24 license obtained under Comet, Comet Incorporated, for
25 the -- for Lexus-Nexus, the incorporator was for that

1 was Spiegel and Utrera. They too had a forwarding
2 address of 2112 Danforth.

3 Your Honor, this entire scheme -- in the end
4 there were thousands of searches. There were hundreds
5 of accounts opened. There were over 100 -- I believe
6 there were just over 100 different CMRAs, which is those
7 mailboxes, those commercial mailboxes. They were all
8 opened, all confirmed fraudulently opened using fake IDs
9 and fake notary stamps and all of which were forwarded
10 to areas in Toronto from the records that we were able
11 to receive. Some of the CMRAs don't exist or don't have
12 records. From the ones we do all of them were sent to
13 the address at 2112 Danforth or to 2372 Weston Road or
14 to 6975 Meadowvale Road to these primary addresses in
15 and around Toronto, Ontario.

16 At some point the Canadian officials agreed
17 to surveil the 2112 Danforth address and at that time it
18 was the defendant who approached that place, obtained
19 the mail from that account and the Canadian officers
20 arrested him at that time at the 2112 Danforth address
21 after he had gotten the mail from that post office box.

22 At the time when he was arrested he was also
23 arrested with the key for No. 179, which is the 6975
24 Meadowvale Road CMRA. He also had in his wallet a Visa
25 credit card under the name of Donald Douglas. He had

1 various letters with credit card information for various
2 individuals that have also been confirmed to be
3 counterfeit and in his vehicle was also found a Rogers
4 Cable bill.

5 Finally, Your Honor, evidence was obtained
6 from j2 Communications. One or more of the telephone
7 numbers that were used during this matter were assigned
8 to j2 Communications. It is a commercial provider of
9 telephone and fax numbers. It then forwards telephone
10 voice mails and fax numbers and can assign area codes
11 all over the United States. From March to August of
12 2007 the -- there were a total of 51 service telephone
13 numbers, of which there were 316 faxes and voice mails
14 in that time. Some of these numbers are connected to
15 the CMRAs in this case, and it was opened and paid for
16 with a fraudulently obtained credit card of Craig
17 Leymaster, also associated in this scheme to defraud.

18 THE COURT: Mr. Henderson, what does your
19 client -- what's his position on the factual basis?

20 MR. HENDERSON: Your Honor, we do not admit
21 that Mr. Adetiloye had complete knowledge of all details
22 of the scheme, and we certainly don't admit that he was
23 involved in or a participant in every aspect of the
24 scheme as it was described by Mr. Chase. But we do
25 admit that sometime during the time period in the

1 Information between March of '04 and August of '07 that
2 he became aware that there was a scheme to defraud banks
3 out of money by the means of making false statements or
4 false representations. And we agree that he
5 participated in the scheme by causing or -- by either
6 mailing or causing to be mailed, either in the U.S. mail
7 or by a commercial carrier, Fed Ex or UPS, documents
8 that were necessary to carry out aspects of the scheme.
9 He knew that this was -- that this was a fraudulent
10 scheme. He knowingly participated in the scheme.

11 THE COURT: Thank you. Mr. Adetiloye, do
12 you agree with what your lawyer just told me?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: The Court finds there is a
15 factual basis adequate to sustain the plea. We'll go
16 ahead and set this matter on for a sentencing hearing.
17 We'll set it for Tuesday, April 26th, 2011 at 9 o'clock.
18 We're led to believe that this sentencing could take the
19 better part of the day; is that true?

20 MR. CHASE: I think that's right, Your
21 Honor.

22 MR. HENDERSON: I agree, Your Honor.

23 THE COURT: All right. So we'll set it for
24 the whole day April the 26th, 2011. The Court will
25 direct that a presentence report be prepared, that the

1 original be lodged -- or filed with the Court, that
2 copies be made available to the parties. Any
3 objections, corrections or exceptions should be raised
4 according to the local practice and subject to the rule.

5 Anything further, from the United States?

6 MR. CHASE: No, Your Honor.

7 THE COURT: From the defense?

8 MR. HENDERSON: Your Honor, I have a written
9 waiver of the Indictment. Should I file it at this
10 time?

11 THE COURT: Go ahead and file it. The Court
12 has found that it's been a knowing and voluntary waiver.

13 MR. HENDERSON: (Indicating.)

14 THE COURT: We'll stand in recess in this
15 matter.

16 (Adjourned at 11:25 a.m.)
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CERTIFICATE OF REPORTER

I, Kelly A. Kroke, a duly appointed
Registered Professional Reporter;

DO HEREBY CERTIFY that I reported in
shorthand the foregoing proceedings had and made a
record at the time and place indicated.

I DO HEREBY FURTHER CERTIFY that the
foregoing and attached (33) typewritten pages contain an
accurate transcript of my shorthand notes then and there
taken.

Dated this 2nd day of June, 2011.

/s/ Kelly A. Kroke
KELLY A. KROKE - RPR, RMR
United States District Court Reporter
District of North Dakota
Southeastern Division